

SENATE BILL 3198  
By Cooper

AN ACT to amend Tennessee Code Annotated, Title 7, Chapters 52 and 59 and Title 65, Chapter 25, relative to the scope of authority of providers of electric service.

WHEREAS, the Study Committee on Utility Deregulation has conducted numerous hearings into the issue of whether distributors of electric service should be permitted to provide other wire or cable based services to their customers; and

WHEREAS, testimony regarding the success or failure of such efforts in other states is mixed, with conflicting reports of failure and success; and

WHEREAS, it appears that, under a system of retail electric competition, electric distributors need in place certain infrastructure necessary to permit their electric service customers to select from a range of electric pricing plans; and

WHEREAS, permitting electric distributors to provide other wire or cable based services to their customers may permit distributors to recapture portions of the cost of constructing this infrastructure improvement; and

WHEREAS, the Study Committee finds it appropriate to permit electric distributors to expand into other services on a pilot basis to enable the General Assembly to gauge the actual impact of such action; now therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 7, Chapter 52, is amended by adding the following as a new, appropriately designated part::

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Section 7-52-501. Every municipality operating an electric plant described in Section 7-52-401 which is designated as a pilot system under the provisions of this act, has the power and is authorized, under the provisions of this act and on behalf of its municipality acting through the authorization of the board or supervisory body having responsibility for the municipal electric plant, to acquire, construct, own, improve, operate, lease, maintain, sell, mortgage, pledge or otherwise dispose of any system, plant, or equipment for the provision of cable service, two-way video transmission, video programming, internet access, internet service, or any other like system, plant, or equipment within and/or without the corporate or county limits of such municipality, and, with the consent of such other municipality, within the corporate or county limits of any other municipality. A municipality may only provide cable service, two-way video transmission, video programming, internet access or other like service through its board or supervisory body having responsibility for the municipality's electric plant. A municipality providing any of the services authorized by this section may not dispose of all or substantially all of the system, plant, and equipment used to provide such services except upon compliance with the procedures set forth in Section 7-52-132.

Section 7-52-502.

(a) The Tennessee Municipal Electric Power Association shall recommend to the Tennessee Regulatory Authority six (6) municipal electric systems for designation as pilot systems. The recommended systems shall meet the following criteria:

(1) Two (2) systems shall represent small markets, meaning markets where the system services less than twenty thousand (20,000) customers for electric service;

(2) Two (2) systems shall represent medium sized markets, meaning markets where the system services from twenty thousand (20,000) to fifty thousand (50,000) customers for electric service; and

(3) Two (2) systems shall represent large markets, meaning markets where the system services more than fifty thousand (50,000) customers for electric service.

(b) The authority shall approve the designation of a pilot system, if the recommended system meets the criteria provided in subsection (a). A system designated as a pilot system may pursue the offering of additional services provided in this act by submitting an application as outlined herein.

Section 7-52-503. Application and Approval Process. (a) A system designated as a pilot system shall submit an application to the authority which includes a:

(1) Business plan, including description of services to be provided, pro forma financial statements, a financing plan, marketing plan, rate structure, and other information defined by the authority;

(2) Description of how the system will meet other conditions of this act;

(3) Information to be collected and provided to the authority to facilitate the Authority's study of the impact of this act;

(4) Sample of the public notice to be printed in newspapers of local circulation which includes key elements of plan and comments of the authority;

(5) Documentation acceptable to the authority indicating that the municipal system governing body has taken action necessary to cooperate with the authority in its efforts to review the impact of the pilot system; such cooperation to include, but not be limited to, providing the

authority and its authorized agents access to information deemed relevant by the authority to the study of the impact of this act; and

(6) Documentation that the municipal system governing board has reviewed and approved the application.

(b) The authority shall review the application for completeness and reasonableness. If application is incomplete, the authority shall notify the applicant of the missing elements. Such applications shall not be further processed until the application is complete. Once an application is complete, the authority shall, within ninety (90) days, provide to the applicant a written evaluation of the application. Such evaluation shall include an assessment of the reasonableness of the business plan and other such items as deemed appropriate by the authority. The authority's written evaluation shall summarize the authority's evaluation of the application and the public notice required in subsection (d) shall include the summary.

(c) Upon receipt of the authority's evaluation, the system governing board shall consider the authority's comments and make whatever changes to the business plan are deemed appropriate. After consideration of the authority's evaluation, the governing board shall consider whether to pursue the offering of additional services to customers.

(d) If the system board determines to proceed, it shall publish a notice in a newspaper of general circulation within that area of its intent to proceed with the offering of additional services. The notice shall include a general description of the business plan and the authority's comments on such plan. The notice shall also specify a date on which the local governing body (or appropriate committee of such body) shall conduct a public hearing on the application.

(e) The local governing body (or appropriate committee of such body) shall conduct a public hearing on such application. No sooner than fourteen (14) days after such public hearing, the local governing body may consider the system's application to provide additional services. A system may undertake the providing of additional services only after approval of the application by the local governing body.

Section 7-52-504. The authorization to provide additional services as permitted in this act shall terminate on June 30, 2002; provided, however, any system providing additional services to customers as a pilot system prior to June 30, 2000, may continue to offer such services to customers notwithstanding the termination date of the pilot project.

Section 7-52-505.

(a) No later than June 30, 2001, the authority shall commence a study of the pilot systems. The authority shall present its study to the appropriate standing committees of the general assembly no later than January 15, 2002.

The goals of the study shall be to determine:

- (1) the impact on the systems of providing additional services,
- (2) the market impact of systems offering additional services, and
- (3) recommendations on changes in the conditions under which systems should offer additional services should the General Assembly decide to permit additional systems to offer additional services.

(b) The Authority may, at its discretion, conduct other interim reviews of pilot projects.

Section 7-52-506. A municipality providing any of the services authorized by this part shall not provide subsidies for such services. Notwithstanding the limitations set

forth in the preceding sentence, a municipality providing such services shall be authorized to:

(1) Dedicate a reasonable portion of the electric plant to the provision of such services the costs of which shall be allocated to such services for regulatory purposes; and

(2) Lend funds, at a rate of interest not less than the highest rate then earned by the municipality on invested electric plant funds, to acquire, construct, and provide working capital for the system, plant, and equipment necessary to provide any of the services authorized under this part; provided, that such interest costs shall be allocated to the cost of such services for regulatory purposes. Any loan of funds made pursuant to this section shall be approved in advance by the state director of local finance and shall contain such provisions as are required by the state director.

Section 7-52-507. Municipality subject to regulatory laws and rules.

(a) To the extent that it provides any of the services authorized by this part, a municipality shall have all the powers, obligations and authority granted entities providing similar services under applicable laws of the United States or the state of Tennessee.

Section 7-52-508. A municipality providing any of the services authorized by this part shall make tax equivalent payments with respect to such services in the manner established for electric systems under part 3 of this chapter. For purposes of the calculation of such tax equivalent payments only, the system, plant, and equipment used to provide such services shall be considered an electric plant, and the revenues received from such services shall be considered operating revenues. For regulatory purposes, a municipality shall allocate to the costs of any services authorized by this part an amount

equal to a reasonable determination of the state, local, and federal taxes which would be required to be paid for each fiscal year by a nongovernmental corporation that provides the identical services.

Section 7-52-509. For regulatory purposes, a municipality shall allocate to the costs of providing any of the services authorized by this part:

(1) An amount for attachments to poles owned by the municipality equal to the highest rate charged by the municipality to any other person or entity for comparable pole attachments; and

(2) Any applicable rights-of-way fees, rentals, charges, or payments required by state or local law of a nongovernmental corporation that provides the identical services.

Section 7-52-510. This part supersedes any conflicting provisions of general law, private act, charter or metropolitan charter provisions.

SECTION 2. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 3. This act shall take effect upon becoming a law, the public welfare requiring it.